

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

STEVE OSCAR BLACKWELL AUSTIN,

Petitioner,

v.

STANISLAUS COUNTY SUPERIOR
COURT,

Respondent.

CASE NO. 1:20-cv-01449-AWI-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO ENTER JUDGMENT AND CLOSE CASE,
AND DECLINING TO ISSUE CERTIFICATE
OF APPEALABILITY

(Doc. No. 10)

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 2, 2020, the magistrate judge assigned to this case issued a Findings and Recommendation that recommended the petition be dismissed without prejudice. Doc. No. 10. The Findings and Recommendation was served upon all parties and contained notice that any objections were to be filed within twenty-one days from the date of service of the instant order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of the case. Having carefully reviewed the entire file, the Court concludes that the Findings and Recommendation is supported by the record and proper analysis.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

1 (a) In a habeas corpus proceeding or a proceeding under section 2255
2 before a district judge, the final order shall be subject to review, on
3 appeal, by the court of appeals for the circuit in which the proceeding
4 is held.

5 (b) There shall be no right of appeal from a final order in a proceeding
6 to test the validity of a warrant to remove to another district or place
7 for commitment or trial a person charged with a criminal offense
8 against the United States, or to test the validity of such person's
9 detention pending removal proceedings.

10 (c)

11 (1) Unless a circuit justice or judge issues a certificate of
12 appealability, an appeal may not be taken to the court of
13 appeals from—

14 (A) the final order in a habeas corpus proceeding in
15 which the detention complained of arises out of
16 process issued by a State court; or

17 (B) the final order in a proceeding under section 2255.

18 (2) A certificate of appealability may issue under paragraph
19 (1) only if the applicant has made a substantial showing of
20 the denial of a constitutional right.

21 (3) The certificate of appealability under paragraph (1) shall
22 indicate which specific issue or issues satisfy the showing
23 required by paragraph (2).

24 If a petition is denied, the court may only issue a certificate of appealability when a
25 petitioner makes a substantial showing of the denial of a constitutional right. § 2253(c)(2). To
26 make a substantial showing, the petitioner must establish that “reasonable jurists could debate
27 whether (or, for that matter, agree that) the petition should have been resolved in a different
28 manner or that the issues presented were ‘adequate to deserve encouragement to proceed
further.’” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S.
880, 893 n.4 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial
showing of the denial of a constitutional right to justify the issuance of a certificate of
appealability. Reasonable jurists would not find the Court's determination that Petitioner is not
entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
proceed further. Thus, the Court will decline to issue a certificate of appealability.

///

///

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendation issued on December 2, 2020 (Doc. No. 10) is ADOPTED in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is DISMISSED;
3. The Clerk of Court is directed to CLOSE the case; and
4. The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: February 2, 2021



SENIOR DISTRICT JUDGE